

D.P.U. 95-8-CC (Phase II)

Investigation by the Department of Public Utilities on its own motion into Western Massachusetts Electric Company's Conservation Charges, and the various components of those charges, including but not limited to the Company's Demand-Side Management monitoring and evaluation reports.

APPEARANCES: Stephen Klionsky, Esq.
260 Franklin Street
Boston, Massachusetts 02110
-and-
Lisa M. Vazza, Esq.
P.O. Box 330
1000 Elm Street
Manchester, NH 03101
FOR: WESTERN MASSACHUSETTS ELECTRIC
COMPANY
Petitioner

L. Scott Harshbarger, Attorney General
By: Frank Pozniak
Assistant Attorneys General
200 Portland Street, 4th floor
Boston, Massachusetts 02114
Intervenor

Ann Brewster Weeks, Esq.
Conservation Law Foundation
62 Summer Street
Boston, Massachusetts 02110-1008
Intervenor

David A. Fazzone, P.C.
McDermott, Will & Emery
75 State Street
Boston, Massachusetts 02109
FOR: EASTERN EDISON COMPANY
Limited Participant

John Cope-Flanagan, Esq.
COM/Energy Services Company
One Main Street
Post Office Box 9150
Cambridge, Massachusetts 02142-9150
FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
Limited Participants

Paul W. Gromer, Esq.
Massachusetts Energy Efficiency Council
60 Thoreau St., Suite 234
P.O. Box 9116
Concord, MA 01742-9116
Limited Participant

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
A.	<u>Scope of Proceedings</u>	1
B.	<u>Procedural History</u>	1
II.	<u>THE COMPANY'S DSM IMPACT EVALUATIONS</u>	3
A.	<u>Introduction</u>	3
B.	<u>Standard of Review</u>	4
C.	<u>Description of DSM Savings Estimation Techniques</u>	6
D.	<u>Reviewability</u>	8
E.	<u>Commercial/Industrial Programs</u>	9
1.	<u>Energy Action Program</u>	9
a.	<u>Description</u>	9
b.	<u>Analysis and Findings</u>	11
2.	<u>Customer Initiated Program</u>	13
a.	<u>Description</u>	13
b.	<u>Analysis and Findings</u>	15
3.	<u>EnergyCHECK Conservation Services Expanded Program</u>	15
a.	<u>Description</u>	15
b.	<u>Analysis and Findings</u>	18
4.	<u>Energy Conscious Construction Program</u>	21
a.	<u>Description</u>	21
b.	<u>Analysis and Findings</u>	23
5.	<u>Energy Saver Lighting Rebate Program</u>	24
a.	<u>Description</u>	24
b.	<u>Analysis and Findings</u>	25
6.	<u>Other C&I Programs</u>	26
F.	<u>Residential Programs</u>	27
1.	<u>Domestic Hot Water Program</u>	27
2.	<u>Appliance Pick-Up Program</u>	28
3.	<u>Other Residential Programs</u>	29
III.	<u>ALTERNATIVE LBR CALCULATION METHODS</u>	30
A.	<u>Introduction</u>	30
B.	<u>Positions of the Parties</u>	32
1.	<u>The Attorney General</u>	32
2.	<u>CLF</u>	34
3.	<u>EETCo</u>	36
4.	<u>Massachusetts Energy Efficiency Council</u>	36
5.	<u>The Company</u>	39

C.	<u>Analysis and Findings</u>	43
1.	<u>Method of LBR Calculation</u>	43
a.	<u>Policy Objectives</u>	43
b.	<u>CLF's Proposal</u>	45
c.	<u>Rolling Period Method</u>	46
2.	<u>Implementation</u>	50
IV.	<u>ORDER</u>	53
TABLE 1.	<u>SUMMARY OF 1992 PROGRAM SAVINGS ESTIMATES</u>	54
TABLE 2.	<u>SUMMARY OF 1993 PROGRAM SAVINGS ESTIMATES</u>	55

I. INTRODUCTION

A. Scope of Proceedings

In Phase I of this proceeding, the Department of Public Utilities ("Department") approved Conservation Charges ("CCs") for Demand-Side Management ("DSM") program implementation by Western Massachusetts Electric Company ("WMECo" or "Company"). Western Massachusetts Electric Company, D.P.U. 95-8-CC (Phase I) at 12 (1995). The CCs are subject to reconciliation following the issuance of this Order based on the results of the Department's investigation of the impact evaluations that measure the kilowatt ("KW") and kilowatthour ("KWH") savings associated with implementation of the DSM programs in 1992 and 1993.¹ Id. The savings estimates the Department approves in this proceeding will be used for the calculation of lost base revenue ("LBR") and incentives that the Company may recover through its CCs. Also in this Order, the Department determines the method to be used to calculate the amount of LBR recovery allowed and the date that a change in such method will take effect.

B. Procedural History

On November 15, 1994, the Company filed with the Department of Public Utilities ("Department") three reports associated with WMECo's evaluations of its DSM programs. The first report, the 1993 Annual Report - Energy Calculations Reference Guide ("1993 Reference Guide"), sets forth the methods, assumptions, and calculations used to determine the energy and

¹ WMECo is a wholly-owned subsidiary of Northeast Utilities ("NU") of Hartford, Connecticut, a public utility holding company. Many of the impact evaluations discussed in this Order are performed on an NU-systemwide basis. These impact evaluations measure savings from program participants in WMECo's service territory as well as the service territory of another NU subsidiary, Connecticut Light and Power Company.

demand savings resulting from the installation of DSM measures in 1991, 1992, and 1993. The other two reports, Northeast Utilities Energy Conscious Construction Program Prescriptive Area - 1992 Measure Installation Impact Evaluation and Energy Action Program Report on 1992 Measure Installations, present detailed descriptions of the Company's DSM Program monitoring and evaluation ("M&E") activities for those programs. The energy and demand savings estimates included in the 1993 Reference Guide were used by the Company in its calculations of LBR and incentives that the Company proposes to recover through its CC rates.

On December 19, 1994, the Department issued an Order of Notice ("Notice") and directed the Company to publish said Notice. In the Notice, the Department stated that it intended to conduct an investigation of (1) the Company's CC rates and the various components of those rates, (2) the Company's DSM savings estimates, (3) the Company's DSM M&E reports, and (4) alternative methods by which to calculate the LBR allowed for recovery by the Company. This investigation was docketed as D.P.U. 95-8-CC.

The Attorney General of the Commonwealth of Massachusetts intervened as of right in this investigation pursuant to G.L. c. 12, § 11E. The Conservation Law Foundation ("CLF") filed a petition for leave to intervene. In addition, Eastern Edison Company ("Eastern Edison"), Cambridge Electric Light Company ("Cambridge Electric") and Commonwealth Electric Company ("Commonwealth Electric") filed petitions for leave to intervene as limited participants. On January 11, 1995, the Department granted CLF full intervenor status and Eastern Edison, Cambridge Electric, and Commonwealth Electric limited participant status. On March 31, 1995,

the Massachusetts Energy Efficiency Council, Inc. ("MEEC") was also granted limited participant status.

Because of the complexity of the issues involved, the Department agreed to separate discovery and hearing schedules for the CC phase from the M&E and LBR phase of this investigation (Tr. 1, at 10; see also, Hearing Officer Memorandum of January 12, 1995). As noted, Phase I established CCs that the Company put into effect March 1, 1995. This Order, the second phase ("Phase II") of the proceeding, addresses the M&E and LBR aspects of this investigation.

On April 24, 25 and 27, 1995, the Department conducted hearings in Phase II of this proceeding. The Company submitted five exhibits; the Attorney General submitted five exhibits; CLF submitted 19 exhibits; and the Department submitted 74 exhibits. The Company responded to 17 record requests and CLF responded to two. All exhibits and responses to record requests were accepted into evidence. Following the hearings, the Attorney General, WMECo, CLF and Eastern Edison filed initial briefs. The Attorney General, WMECo, CLF, Eastern Edison and MEEC filed reply briefs.

II. THE COMPANY'S DSM IMPACT EVALUATIONS

A. Introduction

The Company submitted savings estimates for twelve DSM programs that served residential customers during 1992 and 1993 and eight DSM programs that served commercial and industrial ("C&I") customers during those years (Exh. WM-7, at 3). As discussed below, the

Company has requested final approval of 1992 savings estimates and preliminary approval of 1993 savings estimates for most programs.

B. Standard of Review

In Massachusetts Electric Company, D.P.U. 92-217-B, at 6-7 (1994), the Department established a new standard of review that would be applied to future DSM impact evaluations. The Department stated that, in order for a company's savings estimates to be accepted, the company must demonstrate that its impact evaluations are reviewable, appropriate, and reliable. Id.

An impact evaluation filing is considered reviewable if it is complete, clearly presented, and contains a summary that sufficiently explains all assumptions and data presented. Id. An impact evaluation is considered appropriate if evaluation techniques selected are reasonable given consideration of the characteristics of a particular DSM program, the company's resources, and the available methods for determining demand and energy savings estimates.² Id. Finally, an impact evaluation is considered reliable if the savings estimates included in the evaluation are sufficiently unbiased and are measured to a sufficient level of precision, again, given consideration of the characteristics of a particular DSM program, the company's resources and the available methods for determining demand and energy savings estimates. Id.

The Department previously has found substantial bias in engineering estimates of DSM savings and, accordingly, generally has required companies to measure savings after the

² The Department recognizes that the state-of-the-art in methods used to determine DSM savings estimates is evolving and expects companies to remain up to date with technological and methodological advances in this field.

installation of energy conservation measures ("ECMs").³ Boston Edison Company, D.P.U. 90-335, at 106 (1992); Nantucket Electric Company, D.P.U. 91-106/138, at 212-215 (1991); Massachusetts Electric Company, D.P.U. 90-261, at 79, 80, 85 (1991); Western Massachusetts Electric Company, D.P.U. 91-44, at 142-143 (1991). The Department has identified additional sources of bias in savings estimates, including (1) poor selection of samples used in savings measurement analyses, D.P.U. 91-44, at 138; (2) inaccurate hours-of-use estimates, D.P.U. 90-335, at 105; D.P.U. 91-44, at 142; D.P.U. 90-261, at 109-110; (3) the failure to account for free riders, D.P.U. 90-335, at 111-112; (4) the failure to account for interactions of multiple DSM measure installations, Cambridge Electric Light Company and Commonwealth Electric Company, D.P.U. 89-242/246/247, at 78-79 (1990); and (5) overestimated persistence of savings, D.P.U. 90-335 at 110-111; D.P.U. 91-44, at 147-148.

The Department has recognized that, in certain instances, the costs of obtaining more precise estimates of savings may exceed the incremental value of those more precise estimates. D.P.U. 90-261, at 100. Therefore, the Department has directed companies to pursue savings measurement activities that maximize the level of precision of the DSM savings estimates, but only to the extent that the marginal value of the more precise savings estimates exceeds the marginal cost of obtaining the additional precision. D.P.U. 90-335, at 100-103, 110; D.P.U. 90-261, at 106, 108.

³ The Department has allowed savings estimates which are not based on after-the-fact measurement for programs in which (1) only one well-defined end use is involved and the hours of operation of the installed ECMs are very predictable or controlled by a company, or (2) no after-the-fact measurement is possible. D.P.U. 90-261, at 109; D.P.U. 90-335, at 109, n.40; D.P.U. 91-44, at 142.

C. Description of DSM Savings Estimation Techniques

The Department has not specified the savings estimation techniques to be used by companies in their DSM impact evaluations.⁴ Instead, companies are allowed the flexibility to select techniques that they deem most appropriate, provided that the techniques satisfy the standards of review set forth above. Massachusetts Electric Company, D.P.U. 95-6-CC at 7 (1995).

As a general rule, the first step in developing energy and demand savings estimates consists of producing engineering estimates of annual savings, based on the number of ECMs installed. Id. As stated above, the Department generally has required companies to measure actual savings after the installation of the ECMs. Post-installation measurement techniques typically measure the savings for a sample of program participants in a particular year (the "participant group"). The savings estimates for the participant group then are extrapolated to the entire population of program participants. Id. One frequently-used extrapolation method involves the calculation of a "realization rate" for the participant group. The realization rate is defined as the ratio of the measured savings estimates for the participant group to the engineering savings estimates for the same group. To calculate total program savings estimates, the engineering savings estimates for the entire population of program participants are multiplied by the realization rate. Id.

⁴ Although the Department has not specified savings estimation techniques, it has approved various methods by which energy and capacity savings estimates could be determined, including adjusted engineering estimates, billing analysis and end-use metering methods. See D.P.U. 92-217-B at 7-16; Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 94-2/3-CC at 9-18 (1994).

The energy and capacity savings estimates produced by the impact evaluations are used by the Company and the Department for planning purposes and for determining the DSM incentive and LBR to be collected by the Company in a particular year. In order to serve these purposes, the impact evaluations must produce savings estimates that (1) reflect the period of time over which the ECMs can be expected to generate savings (i.e., "lifetime" savings estimates); (2) reflect the level of demand savings that occur at the time of, or coincident with, a company's peak power demand (i.e., "coincident" demand savings);⁵ and (3) do not include the level of savings that would have occurred in the absence of implementation of the DSM programs (i.e., are "net" savings estimates).⁶ Id. To determine net savings estimates, gross savings estimates must be adjusted to take into account non-program factors that may affect the electricity consumption of program participants. These factors include free-ridership,⁷ spillover and

⁵ Savings estimates that do not take into account the level of demand savings that occurs at the time of a company's peak power demand are referred to as "non-coincident" demand savings estimates.

⁶ Savings estimates that include the level of savings that would have occurred in the absence of implementation of the DSM programs are referred to as "gross" savings estimates.

⁷ A free rider is defined as a program participant who would have installed an ECM without direct payment from an electric company. Investigation into Pricing and Rate-making Treatment for Non-Qualifying Facilities, D.P.U. 86-36-F at 25-26 (1988). A pure free rider would have spent the same amount of money to install the same energy-efficient measures at the same time without benefit of a utility company's program. A partial free rider would have spent less money, installed less equipment, installed only somewhat efficient equipment, and/or installed the equipment at a later date.

free-drivership,⁸ economic conditions (both general and firm-specific),⁹ weather and snap-back.¹⁰

Id.

D. Reviewability

As stated in Section II.B. above, a company's DSM impact evaluation filing is considered reviewable if it is complete, clearly presented, and contains a summary that sufficiently explains all assumptions and data presented. Based on a review of the M&E reports submitted by the Company, the Department finds that the Company's impact evaluation filing satisfies the criteria for reviewability.

E. Commercial/Industrial Programs

1. Energy Action Program

a. Description

The Energy Action Program ("EAP") provides engineering services and financial incentives to the Company's large C&I customers to assist in the identification and installation of

⁸ Spillover is an effect of DSM programs whereby customers' purchases of energy-using technologies or behavioral patterns are altered, but those customers do not ask for a rebate from the electric company and are not considered "participants" in the company's DSM programs. Free drivers, customers whose installation of ECMs is attributable to a company's marketing of a DSM program but who do not participate in a utility-sponsored DSM program or receive payments from a utility, are considered to be a subset of spillover. Western Massachusetts Electric Company, D.P.U. 89-260, at 11-12 (1990).

⁹ Firm-specific economic conditions may include changes in floorspace, equipment, hours of operation, industrial process configuration, output, employment, and/or sales.

¹⁰ Snap-back is an effect where a customer responds to the lower cost of accomplishing a task after implementation of an ECM by increasing energy consumption. Consequently, some of the projected savings for a DSM program are lost as a result of increased use by participants after an ECM is installed.

comprehensive packages of ECMs at their facilities (Exh. WM-7, at 43). The Company initially reported that 21 customers participated in the EAP during 1992, resulting in annual and lifetime energy savings estimates of 9,560 megawatthours ("MWH") and 132,194 MWH, respectively, and summer peak demand savings of 2,114 KW (Exhs. WM-5, at A-3; DPU-1-2-b, d).¹¹ During the course of this proceeding, the Company submitted revised 1992 annual energy savings estimates of 11,913 MWH and summer peak demand savings of 2,488 KW (Exh. DPU-3-17). The Company is requesting final approval of the revised 1992 savings estimates (Exh. DPU-1-2-b, d). In addition, the Company is requesting preliminary approval of 1993 EAP annual and lifetime energy savings estimates of 13,054 MWH and 173,419 MWH, respectively, and summer peak demand savings of 2,642 KW (id.).¹²

The impact evaluation for 1992 implementation of the EAP was conducted on a Northeast Utilities ("NU") systemwide basis (Exh. WM-5, at Ex-1).¹³ Comprehensive on-site engineering assessments were conducted at a sample of 57 of the 83 non-school systemwide participants (id.).¹⁴ The engineering assessments included four techniques: (1) technical process surveys to

¹¹ The majority of 1992 EAP savings resulted from the installation of lighting ECMs; other ECMs installed included motors, computerized energy management systems, building systems and manufacturing processes (Exhs. WM-5, at 4-5; WM-7, at 43).

¹² The preliminary 1993 EAP savings estimates were based on the results of the impact evaluation of 1991 EAP installations (Exh. WM-7, at 45). Final 1993 savings estimates will be based on an impact evaluation of the 1993 EAP installations to be submitted for Department review in September 1995 (Exh. DPU-6-1).

¹³ The EAP is offered to customers in the Connecticut Light and Power service territory as well as to WMECo customers. The Company reported that 116 customers participated systemwide in the EAP during 1992 (Exh. WM-5, at Ex-1).

verify pre-retrofit conditions and obtain new information regarding post-retrofit conditions; (2) spot watt-power measurements; (3) short-term lighting logger metering; and (4) in-field interviews with facility personnel to determine, among other things, free-rider and free-driver factors (id. at 6). The techniques employed at a particular site depended on the characteristics of the ECMs installed at that site (id.). Based on the results of the engineering assessments, realization rates were developed for each of four participant groups: "industrial process"; "other industrial"; "other commercial"; and "office" (Exh. WM-5, at Ex-1 through Ex-3).¹⁵ These realization rates were applied to the total systemwide population of 1992 program participants in each group (id.).

As stated above, the 1992 savings estimates for which the Company is seeking final approval represent revisions to the savings estimates initially submitted by the Company. The Company stated that the revised savings estimates reflect errors identified during a comprehensive review of the data in its DSM tracking system which resulted in a downward revision of approximately ten percent to the tracking system estimates (Exhs. DPU-3-17; WM-5, at 6-8). The savings estimates initially submitted by the Company were calculated using realization rates that were based on, and applied to, the original tracking system savings estimates. The revised savings estimates were calculated using realization rates that were based on, and applied to, the revised tracking system savings estimates (Exh. DPU-3-17). The Company stated that the revised

¹⁴ Savings estimates for school participants were determined through a billing analysis. These savings make up less than five percent of the total savings (Exh. WM-5, at 5-6).

¹⁵ No office participants were located in WMECo's service territory (Exh. WM-5, at A-2).

savings estimates more accurately reflect the actual allocation of systemwide savings between Connecticut Light and Power ("CL&P") and WMECo participants (id.)

b. Analysis and Findings

The record in this proceeding indicates that the on-site engineering assessments used to determine the 1992 EAP savings estimates (1) took place at facilities in which savings represented a majority of total program savings, (2) included a significant level of end-use metering, and (3) produced realization rates for each of the four participant groups. The Department finds that the use of these engineering assessments is an appropriate evaluation technique for determining 1992 EAP savings.

The record shows that, during the course of a review of the data in its DSM tracking system, the Company identified a significant error in the tracking system savings estimates for one participant in the "other industrial" participant group.¹⁶ Because the savings from this participant represented more than one-half of the total savings for the "other industrial" group, the correction of this error resulted in a significant increase in the tracking system savings estimates for this group. The Department finds that, because the revised savings estimates submitted by the Company for this participant group were based on the revised tracking system estimates, the revised savings estimates are less biased than the initial savings estimates and therefore provide a more reliable indication of actual savings than the initial estimates. Therefore, the Department approves the revised savings estimates for the "other industrial" participant group.

¹⁶ For this participant, the tracking system energy savings estimates were increased from 150,000 KWH to 1,800,000 KWH (Exh. DPU-3-17, at 5).

For the "industrial process" and "other commercial" participant groups, no significant errors were identified in the tracking system savings estimates that would have produced a bias in the initial savings estimates for these groups. In addition, the revised savings estimates were not based on new information that was not available to the Company as of the filing date of its 1992 EAP evaluation report. The 1992 EAP impact evaluation was conducted on an NU-systemwide basis. The results of the impact evaluation were then applied equally to CL&P and WMECo participants. The underlying assumption of this approach is that the impact evaluation would include a participant sample that is sufficiently representative of the total systemwide population of program participants so that the results of the impact evaluation could be reasonably extrapolated to that population. Although the errors in tracking system savings estimates may have been greater for CL&P participants than for WMECo participants, the Department considers this to be a random error that should be balanced by other non-identified factors that may have been included in the determination of savings estimates. For these reasons, the Department finds that the revised savings estimates for the "industrial process" and "other commercial" participant groups are not less biased than the initial savings estimates and, therefore, do not provide a more reliable indication of actual savings than the initial estimates. Therefore, the Department rejects the revised savings estimates for these groups. Instead, the Department approves the initial savings estimates for the "industrial process" and "other commercial" participant groups.

The Company is directed to recalculate revised 1992 EAP savings estimates to include the revised savings estimates for the "other industrial" participant group and the initial savings estimates for the "industrial process" and "other commercial" groups, and to submit this

recalculation to the Department in a compliance filing as set forth in Section IV, below. Finally, because the 1993 EAP savings estimates submitted by the Company were based on the Department-approved 1991 EAP impact evaluation, the Department finds that these savings estimates are reliable and approves the 1993 savings estimates on a preliminary basis.

2. Customer Initiated Program

a. Description

The Customer Initiated Program ("CIP") provides financial incentives to large industrial customers who identify, design, and install ECMs at their facilities (Exh. Wm-7, at 47). The Company reported that five customers participated in the program during 1992, resulting in annual and lifetime energy savings of 1,707 MWH and 26,260 MWH, respectively, and net summer peak demand savings of 495 KW (Exhs. DPU-2-17; DPU-1-2-b, d). Three customers participated in the program during 1993, resulting in annual and lifetime energy savings of 1,405 MWH and 23,709 MWH, respectively, and net winter peak demand savings of 317 KW (Exhs. DPU-2-17; DPU-1-2-b, d). The Company is requesting final approval of the 1992 savings estimates and preliminary approval of the 1993 savings estimates (id.).¹⁷

The impact evaluation for the 1992 implementation of this program was conducted on an NU-systemwide basis and consisted of two components. First, as a condition of participation in this program, customers were required to develop a detailed monitoring plan to measure the energy consumption before and after the installation of the ECMs (Exh. Wm-7, at 47). Second,

¹⁷ The Company stated that final 1993 savings estimates would be based on an impact evaluation of 1993 CIP installations to be submitted for Department review in September 1995 (Exh. DPU-2-22).

the savings estimates reported by the 1992 participants were verified based on comprehensive on-site engineering assessments performed by an independent contractor. Based on interviews that took place as part of the on-site assessments, free-rider and free-driver adjustment factors were developed (id. at 48). The on-site assessments produced a net realization rate of 93.29 percent which was applied to the gross tracking savings estimates of those 1992 participants for which no on-site assessment was performed. The 1992 realization rate was also used to determine the preliminary 1993 savings estimates (id. at 48-49).

The independent contractor that conducted the on-site engineering assessments identified eight sites for which the participants provided incomplete and inadequate monitoring plans (Exh. DPU-2-19, at 4.6-4.9).¹⁸ In D.P.U. 94-8-CC (Phase II), at 23-24, the Department stated that any future occurrence of inadequate monitoring on the part of CIP participants may result in disallowance of the recovery by the Company of program expenditures, incentives, and LBR.

b. Analysis and Findings

The Department finds that, for the following reasons, the 1992 impact evaluation for the CIP is appropriate and reliable. First, the majority of the savings estimates were determined consistent with Company-approved, site-specific monitoring plans that included significant levels of end-use metering. Second, these savings estimates were verified using on-site engineering assessments. Third, the savings estimates were adjusted for free riders and free drivers based on

¹⁸ The impact evaluation for 1991 and 1992 implementation of the CIP was conducted jointly. The eight sites for which monitoring plans were incomplete or inadequate included both 1991 and 1992 participants (Exh. DPU-2-19, at 4.6-4.9).

interviews that took place as part of the on-site assessments. Therefore, the Department approves the 1992 CIP savings estimates submitted by the Company as final savings estimates.

Because the 1993 CIP savings estimates are based on the results of the 1992 impact evaluation, the Department finds that these savings estimates are reliable and approves the 1993 estimates on a preliminary basis. However, the Department expects that the impact evaluation for the 1993 implementation of the CIP will demonstrate that the monitoring problems identified by the independent contractor and discussed by the Department in D.P.U. 94-8-CC (Phase II) at 23-24 will have been addressed.

3. EnergyCHECK Conservation Services Expanded Program

a. Description

The EnergyCHECK Conservation Services Expanded ("Expanded EnergyCHECK") Program provides DSM services to small C&I customers whose monthly demand does not exceed 50 KW (Exh. WM-7, at 39). The Company reported that 335 customers participated in the program during 1992, resulting in annual and lifetime energy savings estimates of 3,992 MWH and 67,710 MWH, respectively, and summer peak demand savings of 869 KW (Exhs. DPU-2-2; DPU-1-2-b, d).¹⁹ The Company reported 89 participants during 1993, with annual and lifetime energy savings estimates of 1,445 MWH and 24,214 MWH, respectively, and summer peak demand savings of 304 KW (Exhs. DPU-2-2; DPU-1-2-b, d). The Company is requesting final approval of the 1992 savings estimates and preliminary approval of the 1993 savings estimates.

¹⁹ Approximately 97 percent of the 1992 lifetime energy savings resulted from the installation of lighting ECMs (Exh. DPU-2-3). Other ECMs available through this program include motors, domestic hot water, refrigeration, HVAC, and custom end uses (Exh. WM-7, at 39).

The 1992 and 1993 savings estimates were developed using the results of two studies (Exh. DPU 2-7, at 1-3). The first study, titled Northeast Utilities' WMECO Energy CHECK Conservation Services (<50 KW) Program Site Surveys ("Initial Survey Report"), dated June 3, 1993, consisted of site visits to 30 program participants, during which surveys were conducted to determine, among other things, savings realization rates and the extent to which free riders and free drivers may have affected program savings (Exh. DPU-2-6, at 1-5). No direct measurement of usage was conducted during the site visits (Tr. 4, at 12-13). The Initial Survey Report produced a gross realization rate of 87.1 percent for energy savings (Exh. DPU-2-6, App. A at 10).²⁰ The Initial Survey Report indicated that free riders existed in the program but that 58 percent of the installed ECMs would probably or definitely not have been implemented in the absence of the program (*id.* at 3).²¹ The report did not include a specific free-rider or free-driver adjustment factor.

The Company stated that, in the course of reviewing the Initial Survey Report, it identified nine sites for which the Initial Survey Report might have incorrectly identified the number of installed ECMs (Exh. DPU-2-7, at 1-4). The Company conducted follow-up visits to these sites, the results of which are included in a report titled Northeast Utilities' WMECO Energy CHECK Conservation Services (<50 KW) Program Site Survey Follow-Up Work for 1992 Participants ("Follow-Up Survey Report"), dated June 10, 1994. Based on the follow-up site visits, the

²⁰ The realization rate is determined by dividing the energy savings estimates determined from the site visits, 349,156 KWH, by the projected energy savings for these sites, 400,848 KWH (Exh. DPU-2-6, App. A at 10).

²¹ The report added that "[i]n no case would the retrofit have occurred as soon in the absence of the program" (Exh. DPU-2-6, at 3).

Follow-Up Survey Report produced a revised gross realization rate of 98.6 percent and a net realization rate of 101.5 percent, which included a free-rider adjustment factor of zero, and a free-driver adjustment factor of 2.9 percent (Exh WM-7, at 40). The 1992 and 1993 savings estimates for this program were calculated by multiplying the gross tracking savings estimates for each year by the net realization rate of 101.5 percent included in the Follow-Up Survey Report (id.).

The Company cites the following factors in support of the savings estimates included in the Follow-Up Survey Report: (1) the contractor that conducted the Initial Survey Report concurred with the use of a zero percent free-rider factor; (2) the 2.9 percent free-driver factor represents a reasonable estimate for free drivers; and (3) the hours-of-use figure included in the savings estimates was well within reasonable expectations (Company Initial Brief at 35-36). The Company adds that it does not believe that a billing analysis would have increased the accuracy of the savings estimates (id.).

b. Analysis and Findings

The record in this proceeding includes two realization rates that could be used to calculate the 1992 Expanded EnergyCHECK Program savings estimates: (1) the gross realization rate of 87.1 percent included in the Initial Survey Report; and (2) the net realization rate of 101.5 percent included in the Follow-Up Survey Report. The record shows that no direct measurements of lighting hours-of-use were conducted in determining either of these realization rates. Instead, the realization rates were determined using lighting hours-of-use data that were reported by program participants. For the reasons stated below, the Department finds that the failure to determine

lighting hours-of-use through direct measurements likely has resulted in overestimated assumptions regarding lighting usage and upwardly biased savings estimates.

For lighting ECMs, the variable which is most likely to introduce bias into savings estimates is the hours-of-use. This is because, unlike the connected loads of lighting ECMs, which are generally constant and which can be determined with relative certainty from the lighting manufacturers' specifications, there is a relatively large degree of uncertainty associated with the hours-of-use of the lighting measures (Tr. 4, at 37-38). Because approximately 97 percent of the 1992 program savings resulted from the installation of lighting ECMs, the Company should have focused its M&E efforts for this program on developing reliable estimates of lighting hours-of-use through direct measurements (e.g., through the use of lighting loggers). Although on-site surveys can provide useful information regarding the number of measures actually installed and changes in the operation of a participating facility, the Department does not consider these surveys to be appropriate replacements for direct measurements, particularly in the determination of lighting savings estimates.

The record indicates that the lighting hours-of-use reported by program participants, and included in the 1992 savings estimates, exceeded hours-of-use estimates developed by the Company through its other DSM programs. The Company testified that, through its Lighting Rebate Program, it developed estimates of lighting usage for small C&I customers that ranged from 3,941 annual hours to 4,077 annual hours (Tr. 4, at 29). The record shows that, for the 30 sites included in the Initial Survey Report, an equivalent of approximately 4,230 annual hours-of-use were reported by program participants (Exh. DPU-2-6, App. A at 10).²² Thus, the

(continued...)

equivalent hours-of-use included in the savings estimates exceeded the Company's estimates by between 3.6 and 6.8 percent. Absent actual measurements of hours-of-use for this program, the Department finds that this is a reasonable estimation of the upward bias introduced into the savings estimates by the lighting hours-of-use reported by program participants.

The Department has identified two additional sources of upward bias in the net realization rate produced by the Follow-Up Survey Report. The first source is the use of a free-rider adjustment factor equal to zero. The Department finds that this is inconsistent with the findings of the Initial Survey Report, which stated clearly that free riders existed in the 1992 implementation of this program. The Initial Survey Report indicated that 58 percent of the installed ECMs would probably or definitely not have been implemented in the absence of the program. This implies that 42 percent of the installed ECMs might have been installed in the absence of the program. If only ten percent of these measures represented free riders, then an adjustment factor of approximately four percent would be appropriate. Although the record is not clear regarding the most reliable free-rider factor to use, the Department finds that the use of

(...continued)

²² The equivalent hours-of-use estimate was calculated by dividing the projected annual energy savings for the 30 sites, 400,848 KWH, by the projected demand savings, 94.75 KW (Exh. DPU-2-6, App. A at 10). The reliability of the equivalent hours-of-use estimate depends on two assumptions that the Department believes to be reasonable. First, it is assumed that the energy and demand savings from the 30 sites result almost exclusively from lighting ECMs. The Department believes this to be a reasonable assumption because the sample sites were chosen to be representative of the total population of program participants. Second, it is assumed that the load factor of the lighting ECMs is approximately equal to 1.0. The Department believes this to be a reasonable assumption because the demand savings represent total savings from the 30 sites and are not tied to the Company's system peak demand.

a free-rider factor equal to zero clearly is inconsistent with the findings of the Initial Survey Report.

The final source of bias in the net realization rate included in the Follow-Up Survey Report is the use of a free-driver factor of 2.9 percent. In Boston Gas Company, D.P.U. 94-15, at 40 (1995), the Department stated that "[w]hile the effects of free drivers ... are important for planning purposes, ... these effects are highly speculative and unverifiable. Therefore, the Department puts utilities on notice that the recovery of any future ... [LBR and incentives] should not incorporate free-driver estimates."²³

Based on the above analysis, the Department finds that the realization rate included in the Follow-Up Survey Report is upwardly biased. Because the 1992 savings estimates submitted by the Company were based on that realization rate, the Department finds that the savings estimates are similarly biased and, therefore, rejects the 1992 savings estimates.

The record indicates that the realization rate included in the Initial Survey Report is sufficiently unbiased and, thus, should result in reliable savings estimates. The Department acknowledges that the realization rate included in the Initial Survey Report incorrectly reflected the number of ECMs installed at nine participant sites. However, the Department finds that the results of these errors are balanced by the upward bias introduced into the realization rate by the high level of estimated hours of use and the absence of an adjustment for free riders. Therefore, the Department directs the Company to recalculate the 1992 and 1993 savings estimates for this

²³ In addition, the Initial Survey Report does not recommend a free-driver factor, even though one of the primary objectives of the report was to determine the extent to which free drivership may affect this program.

program using the 87.1 percent realization rate included in the Initial Survey Report, and to submit this recalculation to the Department in a compliance filing as set forth in Section IV, below.

4. Energy Conscious Construction Program

a. Description

The Energy Conscious Construction Program ("ECC") is WMECo's commercial new construction program, designed to capture efficiency opportunities in new buildings, additions to existing buildings, major renovations and planned remodeling changes (Exh. WM-7, at 31). The ECC Program is divided into two components, a Prescriptive Area, which offers relatively simple energy efficiency measures in smaller, less complex buildings, and a Comprehensive Area, which focuses primarily on large buildings in the early stages of design (Exh. WM-6, at 1; D.P.U. 94-8-CC (Phase II) at 31).

The Company submitted an impact evaluation for 1992 Prescriptive Area installations (Exh. WM-6). The Company stated that it has been working to enhance its tracking system and improve the collection of information on end uses (Exh. WM-7, at 31-32). In particular, the Company explained that its evaluation of 1992 installations in the Prescriptive Area built upon the evaluation of 1991 installations by using site visits in conjunction with time-differentiated lighting loggers designed to measure lighting hours of use (Exh. WM-6, at 1). For Prescriptive Area installations in 1992, the company performed an impact evaluation that relied on on-site engineering assessments, detailed measurement of operating hours and connected load, and participant surveys that, in part, assisted in estimating interactive savings, participant spillover

savings, and free ridership (id. at 35; Exh. WM-6, Executive Summary). The Company estimates that the 1992 Prescriptive Area annual savings are 1,648.9 MWH (Exh. WM-7, at 35).

Preliminary savings estimates for all 1992 installations in the ECC Program are 3,032 MWH, based on the evaluation of activity in the Prescriptive Area and tracking system estimates in the Comprehensive Area (Exh. WM-7, at 3, 34). Preliminary savings estimates for 1993 installations in the Prescriptive and Comprehensive Areas, are 6,817 MWH based on tracking system estimates discounted by ten percent to account for some free-rider and free-driver impacts (id. at 34-35).

The Company is using data gathered using lighting loggers to update the baseline building criteria for different kinds and sizes of commercial buildings (Exh. DPU-6-4). The Company expects that the updated baseline information will improve the accuracy of its estimates of electricity savings, thereby reducing the variance between original savings estimates and savings estimated through an impact evaluation (id.). The Company will file additional information on baseline energy consumption in new construction on September 1, 1995 (id.). The Company states that final estimates also will be filed at that time for savings in the Comprehensive Area Program for 1992, for savings in the Prescriptive and Comprehensive Areas for 1993, and for lifetime savings for all components of the program (Exh. WM-7, at 35; Exh. DPU-6-1, at 1).

b. Analysis and Findings

The Department has approved the Company's estimate of savings for 1991 ECC measure installations. D.P.U. 94-8-CC (Phase II) at 33. The Company's estimate of annual savings for 1992 Prescriptive Area savings is based on the same method as the 1991 savings estimates but has been enhanced through tracking system improvements. The Department finds that the Company

has taken appropriate steps to improve upon the evaluation method that the Department approved in its previous Order. Accordingly, the Department finds the Company's estimates of annual savings for 1992 installations in the Prescriptive Area Program to be appropriate and reliable; therefore the Department approves this estimate of savings. The Department also approves the 1992 estimate in the Comprehensive Area on a preliminary basis. Further, the Department approves the preliminary estimate of savings for all 1993 ECC installations because they are also based on the approved 1991 method. The Department will review final estimates of savings in the Comprehensive Area Program for 1992, savings in the Prescriptive and Comprehensive Areas for 1993, and lifetime savings for 1992 and 1993 when they are filed on September 1 1995.

In its previous order, the Department directed the Company to continue its efforts to establish baseline energy consumption practices in new construction. D.P.U. 94-8-CC (Phase II) at 34. The record indicates that the Company is taking steps to improve its baseline estimates of savings. The Department will review the additional information on baseline energy consumption practices after it is filed on September 1, 1995.

5. Energy Saver Lighting Rebate Program

a. Description

The Company stated that the Energy Saver Lighting Rebate ("ESLR") Program is designed to encourage C&I customers to replace existing lighting equipment with higher-efficiency alternatives (Exh. WM-7 at 36).²⁴ WMECo stated that the ESLR Program provides

²⁴ The Company indicated that customers in multi-family residential buildings were also eligible to participate in the ESLR Program (Exh. WM-7 at 36).

cash rebates or account credits to participating customers for the installation of eligible lighting measures (id.).

The Company did not submit an impact evaluation for 1992 or 1993 ESLR measures, but based preliminary savings estimates for those years on a "free-rider realization rate" of 90 percent (id. at 37). The Company indicated that the results of the 1991 impact evaluation could not be applied to 1992 or 1993 participants' savings because of changes in the program's incentive structure that were implemented in 1992 (id.). The Company stated that it will file with the Department an impact evaluation for 1992 and 1993 program activities in September 1995 (Exh. DPU 6-1).

The Company submitted a measure retention study conducted in 1993 of ESLR Program implementation from 1989 through 1991 (Exh. WM-8). The Company stated that the purpose of the study was to evaluate the long-term effectiveness of the program by determining the number of ESLR Program lighting retrofits for those years that were still in place and functional (Exh. WM-7 at 37). The Company stated that the results of the measure retention study suggested that a 69 percent realization rate from a billing analysis used to develop 1991 savings estimates should be applied to lifetime savings estimates of program measures (id.). The Company indicated that it intended to use the results of the measure retention study in the ESLR Program impact evaluations for 1992 and 1993 (Tr. 4 at 63).

The Company stated that the measure retention study was conducted by HEC, a wholly-owned subsidiary of Northeast Utilities (id. at 63, 65). The Company stated that, of the 12,000 participants in the ESLR Program during 1989, 1990, and 1991, a random sample of 165

participant sites was chosen and presented to HEC for analysis (DPU-RR-8; Exh. WM-8 at ii). WMECo indicated that HEC reduced this sample to 69 participant sites due to instances of incomplete paperwork, paperwork that had not been reviewed, vacant properties, and refusal of the selected customer to participate in the study (id. at 10).

b. Analysis and Findings

The Company has submitted preliminary estimates of 1992 and 1993 savings based on a 90 percent realization rate that is intended to capture the effects of free riders, and has indicated that it will provide an impact evaluation for these estimates in September 1995. The Department has reviewed the 1992 and 1993 preliminary savings estimates and finds them to be sufficiently unbiased, and therefore, reliable. Accordingly, the Department approves the Company's preliminary 1992 and 1993 savings estimates, subject to reconciliation based on a review of an impact evaluation to be filed in September, 1995.

With respect to the measure retention study, the Department is concerned about limitations of the study that result from a small and distorted sampling frame. In particular, the Department is concerned about the introduction of bias through reduction of the original sample of study participants caused by data inadequacies, vacant participant sites, lack of willingness or ability of certain customers to participate in the study, and the small size of the sample. In addition, the Department is concerned about the prospect of approving a measure retention study for use in impact evaluations that it has yet to review. Accordingly, the Department does not approve at this time the use of the measure retention study for the 1992 and 1993 impact evaluation.

6. Other C&I Programs

The Company is requesting final approval of the 1992 Farm Share savings estimates and preliminary approval of the 1993 Farm Share and Motor Rebate savings estimates. The Company is also requesting preliminary approval of the 1992 and 1993 savings estimates from the EnergyCHECK Conservation Services Medium ("Medium EnergyCHECK") Program (see Tables 1 and 2). The record shows that the savings estimates for these programs represent less than one percent of the Company's total 1992 and 1993 DSM savings (Exh. DPU-1-2-b). Based on its review of the Company's M&E filing, the Department finds that the savings estimates for these programs are sufficiently unbiased, and therefore, reliable. Accordingly, the Department grants final approval to the 1992 Farm Share savings estimates and preliminary approval to the 1993 Farm Share and Motor Rebate savings estimates and the 1992 and 1993 Medium EnergyCHECK Program savings estimates, as submitted by the Company. The Department expects that final savings estimates for the 1993 Farm Share Program and the 1992, and 1993 Medium EnergyCHECK Program will be based on impact evaluations to be submitted for Department review in September 1995 (see Exh. DPU-6-1).

F. Residential Programs

1. Domestic Hot Water Program

The Domestic Hot Water Program offers measure installation (e.g., efficient lighting) and appliance maintenance for the Company's general use and electric hot water customers (Exh. WM-7, at 13). Savings estimates for both 1992 and 1993 are based on research conducted on program activities and installations in 1991, 1992 and 1993, which used multiple evaluation

methods to derive measure-specific savings estimates (Exh. WM-7, at 13-14; Exh. DPU-6-1, at 2). The final estimate for annual savings from 1992 activities is 2,661 MWH; the preliminary estimate for annual savings from 1993 activities is 2,294 MWH (Exh WM-7, at 3). Lifetime savings estimates for 1992 and 1993 are 24,909 MWH and 20,714 MWH, respectively (*id.*).

The Department reviewed the Company's evaluation methods for this program in D.P.U. 94-8-CC at 61 and found the savings estimates derived using these methods to be acceptable. Because the evaluations were conducted on installations from 1992 and 1993, the Department finds it reasonable to apply the savings estimates to installations in those years. Accordingly, the Department approves as reliable the Company's final savings estimates for 1992 and preliminary savings estimates for 1993 implementation of the Domestic Hot Water Program.

2. Appliance Pick-Up Program

The Appliance Pick-Up Program is designed to remove operating secondary refrigerator/freezers and freezers from sites in the Company's service territory (Exh. WM-7, at 23). The final estimate of annual savings for 1992 program activity, and the preliminary estimate of annual savings for 1993 program activity, are based on a billing analysis conducted on 1991 participants (Exh. WM-7, at 23). The billing analysis produced appliance-specific savings estimates (Exh. DPU-6-1, at 3). The Company states that it is appropriate to base savings estimates for program activity in 1992 and 1993 on these savings estimates because program delivery is similar for 1991, 1992, and 1993 (Exh. WM-7, at 24; Exh. DPU-6-1, at 3). The final estimate for annual savings from 1992 appliance removals is 1,582 MWH; the preliminary estimate for annual savings from 1993 appliance removals is 1,439 MWH (Exh WM-7, at 3).

Lifetime savings estimates for 1992 and 1993 are 12,652 MWH and 11,514 MWH, respectively (id.).

The Department reviewed the Company's evaluation method for this program in its last M&E proceeding and found the savings estimates derived using this method to be sufficiently unbiased and precise. D.P.U. 94-8-CC, Phase II, at 47-48. Because the previous evaluation resulted in appliance-specific savings estimates, and the program design remained the same between 1991 and 1993, the Department finds it reasonable to apply the savings estimates to installations in 1992 and 1993. Accordingly, the Department approves as reliable the Company's final savings estimates for 1992 and preliminary savings estimates for 1993.

3. Other Residential Programs

The Company has not presented final savings estimates for 1992 program activity in the Single Family Electric Heat Program, the Multi-family Program, or the Public Housing Program (Exh. WM-7, at 3). Preliminary estimates are based on a billing analysis in the Single Family Electric Heat Program, and in the Multi-family and Public Housing Programs on tracking data adjusted for lighting retention rates and hot water savings rates Exh. WM-7 at 10, 12; D.P.U. 94-8-CC at 35, 51). Evaluations for 1992 and 1993 program activity in all three programs are on-going and will be presented to the Department on September 1, 1995 (Exh. DPU-6-1, at 1). The Department accepts the savings estimates for program activity in 1992 and 1993 in these three programs on a preliminary basis and will consider final estimates when the additional evaluation information is filed.

The Company is requesting final approval of the 1992 savings estimates and preliminary approval of the 1993 savings estimates for the Neighborhood, Lighting Catalog, Light Fantastic, and Mass-Save Programs (Exh. WM-7 at 3). The Company stated that the 1992 Neighborhood Program and Lighting Catalog savings estimates were developed using studies approved by the Department in D.P.U. 94-4-CC (Phase II) (Tr. 4 at 57). For the Light Fantastic Program, the Company stated that the level of participation in 1992 did not warrant the expense of an impact evaluation, so the Company used estimates based on the results from the impact evaluation conducted for the Lighting Catalog Program (id. at 59); Exh WM-7 at 29). For the Mass-Save Program, the Company stated that final savings estimates for 1992 and preliminary savings estimates for 1993 were based on engineering estimates adjusted by the findings of an evaluation of the Connecticut Residential Conservation Service Program that was conducted in 1983 (id. at 28-29). The Company indicated that the results from an impact evaluation of the Single Family Electric Heat Program would be applied to update the 1993 preliminary savings estimates (Exh. DPU-6-1). Accordingly, the Department approves the final 1992 savings estimates for the Neighborhood, Lighting Catalog, and Light Fantastic Programs. However, because the Company's 1992 savings estimates for the Mass-Save Program are based on the results of a program evaluation that is over ten years old, the Department accepts the Company's 1992 savings estimates for the Mass-Save Program on a preliminary basis only. The Department will consider granting final approval of 1992 savings estimate for the Mass-Save Program after reviewing a more current impact evaluation that may be applied to the Mass-Save Program.

III. ALTERNATIVE LBR CALCULATION METHODS

A. Introduction

As part of its CC, WMECo is collecting about \$12 million of LBR during 1995 based on estimated savings associated with DSM program implementation from 1991 through 1995 (Exh. CLF-1). WMECo projects LBR recovery of approximately \$15.7 million in 1996, an amount that represents a significant portion of the Company's total DSM cost recovery (id.; WM-1, Summary 2). To address this issue, as well as to meet the policy objectives regarding the recovery of LBR set out in section C.1.a, below, the Department investigated alternative methods by which to calculate the LBR that would be recoverable by the Company.²⁵ The Department investigated two alternative methods by which LBR could be calculated. The first method investigated by the Department would allow the Company to recover Department-approved LBR associated with a specific year of DSM implementation for a period equal to the average period between each of the Company's last four base rate cases, or until new rates take effect subsequent to a new base rate proceeding, whichever comes first ("Rolling Period Method") (Exh. CLF-1-8). The Department has adopted this Rolling Period Method for four other electric companies. Fitchburg Gas and Electric Light Company, D.P.U. 95-5-CC, (1995); Cambridge Electric Light Company and Commonwealth Electric Company, D.P.U. 95-2/3-CC, (1995); Boston Edison Company, D.P.U. 95-1-CC (1995); Eastern Edison Company, D.P.U. 94-4-CC (1994).

²⁵ Notice of the Department's intent to investigate alternative methods for calculation of the Company's LBR recovery was provided at the public notice for this proceeding. (Order of Notice, D.P.U. 95-8-CC (Phase I) at 5) and (Tr. 1 at 15). In addition, recent Department orders have revised the LBR recovery method for other companies. Boston Edison Company, D.P.U. 95-1-CC (1995), and Eastern Edison Company, D.P.U. 94-4-CC (1994).

WMECo calculated that the average period between each of its last four base rate cases was about one year (Exh. WM-4 at 15).²⁶

The second alternative LBR calculation method investigated by the Department, as proposed by CLF ("CLF Proposal"), would entail LBR recovery as it is currently structured, over a one- to three-year period, with the modification that the Company would file a rate case after that period (Exh. CLF-1 at 13; Tr. 5 at 21-22). CLF stated that the rate proceeding would entail a redesign of base rates to adjust for a change in the level of sales from the level of sales approved by the Department in the previous rate case (*id.* at 14). CLF added that the approved revenue requirement allocated to each rate class in the previous full rate case would be divided by the most recent test year sales to develop new rates (*id.*).²⁷

B. Positions of the Parties

1. The Attorney General

The Attorney General argues that, consistent with precedent, the Department should adopt the Rolling Period Method for the calculation of the level of LBR to be recovered by the Company (AG Initial Brief at 3). The Attorney General states that the Department adopted the

²⁶ The Company stated that its last four base rate cases were (1) D.P.U. 91-290 filed December 13, 1991; (2) D.P.U. 90-300 filed December 14, 1990; (3) D.P.U. 89-255 filed December 15, 1989; and (4) D.P.U. 88-250 filed December 16, 1988 (Exh. WM-4 at 15). WMECo added that the base rate cases in D.P.U. 89-255 and D.P.U. 88-250 were filed as a result of a Department directive to file annual rate cases to phase in the costs associated with construction of the Millstone Unit 3 nuclear plant ("Millstone 3") (*id.*).

²⁷ CLF stated that it would not be necessary to adjust revenue requirements to account for the sales-erosion effect of DSM programs (Exh. CLF-1 at 16). CLF added that the rate case proceeding to account for this effect would therefore require considerably less time and resources than would a full base rate proceeding (*id.*).

Rolling Period Method in D.P.U. 94-4-CC, D.P.U. 95-1-CC, and D.P.U. 95-2/3-CC, and that no argument has been presented in this proceeding that would support a departure from Department precedent on LBR recovery (id. at 5-6).

The Attorney General states that WMECo's most recent rate case order was issued in July 1992 (id. at 8). The Attorney General adds that prior to July 1992, and extending back to 1980, the average period between WMECo's last four rate cases was one year (id. at 9). The Attorney General further states that the five WMECo rate case orders issued between June 1986 and June 1990, inclusive, involved a five-year phase-in of the costs associated with the useful portion of the Company's investment in the Millstone 3 generating unit,²⁸ and that WMECo was required by the Department to file the four rate cases subsequent to D.P.U. 85-270 to recover these costs (id.). The Attorney General believes that, as a result of the requirement to file the Millstone 3 phase-in rate cases, it would be appropriate to exclude from the calculation of the Company's "rolling period," those four rate cases that were filed subsequent to D.P.U. 85-270 (id.). The Attorney General contends that excluding these rate cases from the calculation of the Company's rolling period results in an average time frame of 2.25 years between each of its last four rate cases (id.).

The Attorney General argues that the Department should apply the Rolling Period Method to the Company's 1995 CC (id. at 10). The Attorney General states that WMECo's DSM budget levels for 1992 through 1995, inclusive, were established by settlements approved by the

²⁸ The five WMECo rate cases that involved the phase-in of costs associated with the Millstone 3 generating unit were D.P.U. 85-270, D.P.U. 86-280, D.P.U. 87-260, D.P.U. 88-250, and D.P.U. 89-255.

Department in Western Massachusetts Electric Company, D.P.U. 92-13 (1992) and Western Massachusetts Electric Company, D.P.U. 92-88-A (1993) (id.). The Attorney General contends that the terms of these settlement agreements do not preclude the Department from applying the Rolling Period Method in the calculation of the recovery of LBR by WMECo in 1995 and that, therefore, the Department should apply this method to the 1995 CC (id. at 13).

2. CLF

CLF argues that application of the rolling period to WMECo would produce significant disincentives to future WMECo investments in DSM programs that produce long-term energy savings (CLF Initial Brief at 2). CLF therefore requests that the Department not apply the Rolling Period Method to WMECo without making specific revisions to the substance and the timing of its implementation (id.). Specifically, CLF recommends that the Department adopt the CLF Proposal, an LBR recovery method whereby LBR recovery would remain as it is currently structured, with the modification that the Company would be required to periodically file a rate case that would entail a redesign of base rates to adjust for a change in the level of sales from the level of sales approved by the Department in the previous rate case (id.). CLF contends that such a modification to the existing LBR recovery method would avoid creating disincentives to the Company's continued investment in cost-effective DSM programs (id. at 3).

CLF argues that the Rolling Period Method, as applied by the Department in D.P.U. 95-2/3-CC, D.P.U. 95-1-CC, and D.P.U. 94-4-CC, is contrary to the original policy intent of LBR recovery (id.). CLF contends that, in D.P.U. 86-36-F, the Department authorized companies to propose, on a case-by-case basis, adjustment to their rates between rate cases to

compensate for any significant sales erosion and revenue loss attributable to the successful implementation of DSM programs (id. at 4). CLF argues that the Rolling Period Method is inconsistent with this policy objective in that it arbitrarily limits the LBR recovery period on a basis unrelated to the time over which DSM energy savings are produced (id. at 3).

CLF states that the Department approved an LBR recovery method for WMECo in Western Massachusetts Electric Company, D.P.U. 89-260 (1990) (id. at 4). CLF contends that WMECo's LBR recovery method, as adopted in D.P.U. 89-260, allows the Company to recover an amount equal to the KWH savings, in each year, from all DSM measures installed since the last rate case, multiplied by the base rate demand and energy charges (id.). CLF adds that this cost recovery mechanism was intended to remove the sales erosion effects of DSM between rate cases, thereby making WMECo indifferent to DSM investments insofar as the Company's level of sales was concerned (id. at 5). CLF concludes that the Rolling Period Method does not eliminate the sales erosion disincentive for DSM investments, and that the method would be particularly detrimental to WMECo because of the relatively short period of time between each of the Company's last four rate cases (id. at 6-8).

CLF further argues that the CLF Proposal eliminates the disincentives to DSM investments that would result if the Rolling Period Method were applied to WMECo (id. at 8). CLF argues that, under the CLF Proposal, the adjustment to base rates that would take place on a periodic basis would have the effect of rolling lost sales due to DSM into base rates (id. at 9).²⁹ In

²⁹ CLF states that, under the CLF Proposal, LBR associated with DSM measures installed prior to the filing of the next rate case would remain recoverable through a revised energy charge, rather than through a separate LBR component of the conservation charge (CLF Initial Brief at 9).

years between rate cases, according to CLF, LBR accumulation and recovery should continue in the manner that it does currently (id.). CLF states that the CLF Proposal should be adopted and applied to WMECo (id. at 16).

Finally, CLF contends that any change to the Company's current LBR recovery method should be applied to the Company at the time of its 1996 conservation charge filing (id. at 19). CLF states that the Company's DSM budgets and cost recovery for the period between 1992 and 1995 were established under terms of the settlement agreements approved by the Department in D.P.U. 92-88-A and D.P.U. 92-13 (id. at 16). CLF argues that these agreements, entered into in good faith by their signatories, and approved in the same spirit by the Department, indicate that the Company's current LBR recovery mechanism should remain in place through 1995 (id. at 17).

3. EECo

EECo recommends that the Department adopt the Rolling Period Method in this case, and that it reject the CLF Proposal (EECo Letter Brief at 1-2). EEC Co states that recovery of LBR was instituted and has been allowed because the Department does not allow a company to adjust test-year revenues to account for any sales erosion effect of DSM programs (id. at 2). EEC Co further argues that, in D.P.U. 94-4-CC the Department found that the Rolling Period Method was consistent with precedent and could be applied to all electric companies (EECo Reply Brief at 2). EEC Co concludes that nothing in the record of the instant case establishes that these findings should be abandoned in favor of the CLF proposal (id.).

4. Massachusetts Energy Efficiency Council

MEEC argues that the Department should not apply the Rolling Period Method to WMECo (MEEC Brief at 2). MEEC argues that under the Rolling Period Method, LBR recovery would be arbitrarily limited to a period of time equal to the average period between a company's last four rate cases, or until new base rates take effect (id. at 3). MEEC argues that such a limitation on the LBR recovery period would leave in place a disincentive to invest in DSM programs (id. at 4). MEEC further argues that it may be appropriate for the Department to reexamine LBR recovery on a prospective basis, but that any modifications to the current recovery method should be evaluated according to the underlying purpose of LBR (id. at 3). MEEC contends that the Department's LBR recovery policy was intended to remove the financial disincentives that electric companies might perceive as a reason not to implement DSM programs (id.).

MEEC argues that the stated policy objective of LBR recovery -- removal of the financial disincentive to invest in DSM -- is unrelated to the stated policy objectives underlying the adoption and application of the Rolling Period Method in previous cases (id.). MEEC refers to the Department's order in D.P.U. 95-1-CC to identify the reasons given by the Department for adopting the Rolling Period Method (id. at 4). First the Department reasoned that, because the Rolling Period Method allows for recovery of LBR for a period equal to the average, historic time span between rate cases, it provides a reasonable approximation of company costs that would be sought in a rate case proceeding, and therefore a reasonable approximation of the extent to which a Company's DSM programs would allow the company to reduce the costs of providing electric

service (id.). However, MEEC contends that the average, historic time span between rate cases does not represent a reasonable approximation of the extent to which DSM reduces companies' costs of providing electric service, as evidenced by the fact that applying the Rolling Period Method to different companies produces widely differing results in the period during which LBR recovery is allowed (id. at 4-5).

MEEC states that the next reason given by the Department to support the adoption of the Rolling Period Method is that it provides companies with an incentive to reduce costs and improve efficiency of operation wherever possible (id. at 5). MEEC argues that the Rolling Period Method only provides an incentive for companies to reduce DSM investments, and that discouraging investment in cost-effective DSM will result in higher costs and reduced efficiency (id.).

MEEC states that an additional reason given by the Department to support the adoption of the Rolling Period Method is that it is consistent with Department precedent in that recovery for rate case expenses is treated in a similar manner to LBR recovery under the Rolling Period Method (id.). MEEC argues that recovery of rate case expenses is directly related to the period of time between rate cases, but that LBR recovery is not (id.).

MEEC states that the next reason given by the Department to support the adoption of the Rolling Period Method is that it can be applied to all electric companies (id. at 6). MEEC argues that the Rolling Period Method indeed may be applied to all electric companies, but that it would be unfair to do so (id.). MEEC states that uniform application of the Rolling Period Method produces widely varying results among electric companies (id.).

MEEC states that the final reason given by the Department to support the adoption of the Rolling Period Method is that it is simple to administer (id.). MEEC concedes that the Rolling Period Method may be simple to administer, but also restates its contention that it is "not well-suited to the job at hand" (id.).

Finally, MEEC argues that the Department should "honor past commitments" regarding WMECo's LBR recovery for 1995 (id.). MEEC states that WMECo's DSM budgets and cost recovery for the period through 1995 were the subject of signed settlement agreements approved by the Department, and that the Department has no choice but to honor these commitments and allow full LBR recovery through 1995 (id.).

5. The Company

WMECo states that the Department's policy regarding recovery of LBR had its genesis in the order in D.P.U. 86-36-F, where the Department recognized that, if a company invests in DSM measures, it would experience a loss in sales for which an adjustment should be made (WMECo Initial Brief at 5). The Company further states that the Department set forth its policy regarding recovery of LBR by WMECo in D.P.U. 89-260 (id.). WMECo states that the provisions of D.P.U. 89-260 allowed WMECo to recover a dollar for every dollar of income lost due to the Company's DSM measures, until such time as the Company filed a general rate case (id.). The Company states that, subsequent to the decision in D.P.U. 89-260, the Department approved two settlement agreements that reiterated and confirmed the rate recovery for LBR as set forth in D.P.U. 89-260 (id.). The Company argues that, consistent with the policies set forth in these

Orders, the Company is entitled to collect all LBR incurred through 1995, net of adjustments for actual energy savings (id. at 13).

The Company argues that the Department's prior orders and approval of settlements preclude any change in WMECo's level of LBR recovery for 1995 (id. at 8). WMECo contends that the Department's Order in Phase I of this proceeding settled the issue of WMECo's recovery of 1995 LBR (id.).³⁰ In addition, the Company argues that settlement agreements in D.P.U. 92-13 and D.P.U. 92-88 fix the LBR recovery method for 1995 (id. at 9-12).

The Company submits that, because the issue of WMECo's 1995 LBR recovery was decided in Phase I of this proceeding, there is no need to issue a decision on the LBR recovery method at this time (id. at 13-14). The Company further submits that the issue of LBR recovery for the year 1996 should be taken up during the review of the Company's next CC filing, which it anticipates making in January 1996 (id. at 14).³¹ In addition, the Company states that it plans to file a performance-based ratemaking plan in calendar year 1996, potentially obviating the need to address DSM in DSM-specific proceedings (id. at 15). WMECo states that the forthcoming performance-based ratemaking plan adds further weight in favor of deferring a decision on the LBR recovery method in the instant proceeding (id.).

³⁰ In addition, the Company states that the Department's Order in Phase I of this proceeding fixes the Company's LBR recovery method beyond calendar year 1995, through March 1, 1996, and that no change in the LBR recovery mechanism may be adopted prior to March 1, 1996 (WMECo Initial Brief at 12-13).

³¹ WMECo indicates that it understands the Department's concern regarding high CC rates in general and LBR in particular (WMECo Initial Brief at 14). The Company states that it intends to design 1996 DSM programs and CC rates that meet the Department's concerns (id.).

WMECo contends that it is in a unique position vis-a-vis other Massachusetts electric utilities, and that a change in the LBR recovery method could disproportionately harm WMECo (id. at 15-17). The Company contends that it stands to lose more dollars through the application of a "restricted LBR recovery method" than other Massachusetts utilities because WMECo has accumulated a higher level of LBR than other companies (id.).³² The Company attributes the relatively high level of LBR accumulation to its successful delivery of energy conservation services to customers and urges that the Department not penalize WMECo for its high level of performance (id.).

WMECo contends that a change in the LBR calculation method would affect the Company's ability to maintain "net income neutrality," and consequently would jeopardize the Company's ability to qualify for federal sulphur dioxide emission allowances and to participate in the Climate Challenge Initiative sponsored by the U.S. Department of Energy ("DOE") (id. at 18-20). In support of this contention, the Company refers to correspondence from the Assistant Secretary of DOE in response to a request by WMECo to comment on the effects of the Rolling Period Method and the Company's ability to obtain sulphur dioxide emission allowances (id.). The Company maintains that the correspondence from DOE supports WMECo's contention that adoption of the Rolling Period Method would jeopardize the Company's position with respect

³² WMECo states that the Company would lose three times as many dollars as Boston Edison through the application of a "restricted LBR recovery method" (WMECo Initial Brief at 16).

to maintenance of net income neutrality and would be inconsistent with federal energy policy (id. at 20).³³

The Company states that the Department may change its LBR recovery policy prospectively, but that any retroactive change would be contrary to an enforceable regulatory bargain (id. at 21). The Company submits that it is the Department's prerogative to change the LBR recovery method for DSM measures installed in 1996 and beyond, but takes issue with the Department's authority to deny retroactively recovery of LBR for those measures already implemented (id. at 21-22). WMECo argues that such a policy "does not satisfy the requirement of reasoned consistency in agency decisions, is confiscatory, and raises due process issues" (id. at 22-28).

WMECo argues that the record in this case contains insufficient evidence to support the Department's contention that the Company realizes non-fuel cost savings as a result of the successful implementation of DSM (id. at 28-31).³⁴ The Company further argues that there is no basis for the Department to decrease the LBR sought by the Company based on non-fuel cost savings (id. at 31).

Finally, the Company argues that the CLF Proposal would be discriminatory, unworkable, and contrary to public policy, and that it should not be adopted by the Department (id. at 31-34).

³³ See, Clean Air Act Amendments of 1990, 42 U.S.C. § 7651c(f) and 40 CFR 73.82(a)(9)(i).

³⁴ The Department notes that in response to a Department Information Request regarding possible savings in transmission and distribution expense due to DSM implementation, the Company stated that "the investment in transmission and distribution is already lower than it would have been absent DSM programs" (Exh. DPU-7-12).

The Company contends that the CLF Proposal would penalize WMECo more severely than the Rolling Period Method because the CLF Proposal would eliminate LBR recovery every year or every other year (id. at 32). In addition, WMECo contends that the CLF Proposal would penalize the Company in the event that sales or load were to increase, and that it would be inappropriate to create a link between recovery of LBR and load growth (id.). WMECo also argues that the rate case proceeding contemplated as part of the CLF proposal would be complex and represent a departure from anything previously attempted by the Department (id. at 33). Further, the Company argues that the CLF proposal would increase the level of risk associated with the implementation of DSM, and that there is an absence of record evidence illustrating the quantitative effects such a policy might have if adopted (id. at 34).

C. Analysis and Findings

The two issues relative to LBR in this proceeding involve (1) the method to be used in the calculation of the LBR to be recovered by the Company, and (2) the effective date of the implementation of any alternative method that may be adopted. The Department deals with both issues below, beginning with the appropriate method of calculating LBR recovery for WMECo.

1. Method of LBR Calculation

a. Policy Objectives

In D.P.U. 86-36-F, the Department established its policy basis for rate adjustments between rate cases to compensate companies for any significant erosion of revenues experienced due to the successful implementation of DSM. D.P.U. 86-36-F at 35, 36. The Department also stated that such adjustments would be appropriate when the level of demand or energy sales

reduction is significant in comparison with a company's total load and sales volume. Id. at 35. In D.P.U. 89-260, the Department set forth its policy regarding the LBR recovery method applicable to WMECo. D.P.U. 89-260, at 106-107. The method approved by the Department in D.P.U. 89-260 allowed the Company to recover in each year a dollar amount equal to the KW and KWH savings attributable to the Company's DSM programs implemented since the last general rate case, multiplied by base energy and demand charges. Id. Accumulation of LBR was to continue until such time as the Company filed a general rate case. Id. at 100.

In a series of orders, beginning with D.P.U. 94-4-CC and continuing through D.P.U. 95-1-CC, D.P.U. 95-2/3-CC, and D.P.U. 95-5-CC, the Department investigated various alternative LBR recovery methods. These investigations reflected an awareness by the Department that, because of competitive pressures on electric companies to mitigate rate increases, electric companies were not filing general rate cases at regular and brief intervals. As a result, the likelihood increased that the LBR portion of companies' CCs would increase to levels unanticipated when the Department issued its decisions in D.P.U. 86-36-F and D.P.U. 89-260. Therefore, in D.P.U. 95-5-CC, D.P.U. 95-2/3-CC, D.P.U. 95-1-CC, and D.P.U. 94-4-CC, the Department investigated alternative LBR recovery methods to determine the extent to which they would reflect the fact that a company's implementation of DSM programs would, over time, permit a reduction in the cost of providing electric service to ratepayers. See, e.g., D.P.U. 94-4-CC at 41. Through these investigations, the Department sought LBR recovery methods that would provide sufficient incentive to a company's management to reduce costs and manage resources as efficiently as possible (id. at 42). In addition, the Department sought LBR

recovery methods that were consistent with Department precedent, potentially applicable to all electric companies, and relatively simple to administer. Thus, in its analysis of proposals regarding alternative methods for the calculation of the LBR to be recovered by WMECo, the Department balances the competing policy objectives contained in previous Orders relative to recovery of LBR. Specifically, the Department reviews the proposals discussed herein on the basis of policy objectives set forth in D.P.U. 86-36-F, D.P.U. 89-260, D.P.U. 94-4-CC, D.P.U. 95-1-CC, D.P.U. 95-2/3-CC, and D.P.U. 95-5-CC.

b. CLF's Proposal

CLF recommended that the Department adopt the CLF Proposal, which CLF asserts would meet the policy objective regarding removal of the DSM investment disincentive caused by any erosion of revenues attributable to the successful implementation of DSM. The Company argued that the CLF Proposal should be rejected because it would be discriminatory, unworkable, and contrary to public policy. EECO recommended that the CLF Proposal should be rejected because it is inconsistent with Department precedent established in recent CC cases.

The Department notes that the CLF proposal would entail a "single-issue" rate case on a periodic basis. The purpose of such a rate case would be to capture the effects of sales erosion attributable to the successful implementation of DSM. However, while the effects of DSM programs and measures might be reflected in rates based on a new test year sales level through such a proceeding, so too would the effects of a multiplicity of other factors unrelated or only indirectly related to DSM. For example, the effects of changes in the Company's level of energy sales attributable to variations in weather and the economy would also be reflected. The CLF

Proposal would therefore have a more far-reaching impact on ratemaking in general than merely providing an adjustment to rates to account for LBR.

The Department also notes that, absent analysis of the quantitative outcome of the CLF Proposal, were it to be implemented, it is difficult for the Department to make findings on the extent to which the CLF Proposal is discriminatory, contrary to public policy, or consistent with the policy objective regarding removal of the DSM investment disincentive caused by any erosion of revenues attributable to the successful implementation of DSM. The record in this proceeding does not provide sufficient justification to institute an entirely new method of calculating LBR as proposed by CLF. Accordingly, the Department does not accept the CLF Proposal.

c. Rolling Period Method

The Company, CLF, and MEEC recommended that the Department not adopt the Rolling Period Method for the calculation of LBR to be recovered by the Company. The Company, CLF, and MEEC argued that the application of the Rolling Period Method in this case would be contrary to the original policy intent of LBR, as stated in D.P.U. 86-36-F and D.P.U. 89-260. In addition, WMECo argued that adoption of the Rolling Period Method would disproportionately harm WMECo because of the relatively high level of LBR that the Company has accumulated, and would jeopardize the Company's ability to obtain federal sulphur dioxide emission allowances.

The Attorney General and EEC Co argued that, consistent with Department precedent, the Department should adopt the Rolling Period Method for the calculation of LBR to be recovered by the Company. In addition, the Attorney General stated that, as a result of the requirement in D.P.U. 85-270 to file the Millstone 3 phase-in rate cases, it would be appropriate to exclude from

the calculation of the Company's "rolling period" those four rate cases that were filed subsequent to D.P.U. 85-270.

The Company, CLF, and MEEC identified the tension between the Rolling Period Method and the original policy intent of LBR recovery. However, as noted above, far-reaching changes in the electric industry have signalled a need for the Department to revisit the issue of LBR recovery. Clearly, it is well within the authority of the Department to adapt its policies to changing conditions in the electric industry.³⁵

In addition, the record in this case indicates that, while they may be difficult to quantify, the Company realizes some level of cost savings as a result of its implementation of DSM programs.³⁶ Further, the Department has found in previous cases that certain transmission and distribution expenditures, as well as some operations and maintenance costs of generating plants on the margin, can be avoided by electric companies as a result of DSM program installations. See, e.g., D.P.U. 95-1-CC at 66. The Department has implemented the Rolling Period Method to serve as a proxy for such costs that have not yet been, or cannot be, quantified by any company. Id. at 67-68.

As noted above, the Department previously stated that adjustments between rate cases to compensate companies for any significant erosions of revenue due to implementation of DSM

³⁵ See, e.g., Boston Edison v. Department of Public Utilities, 375 Mass. 1, cert. denied, 439 U.S. 921 (1978); American Hoechst Corporation v. Department of Public Utilities, 379 Mass. 408 (1980); Boston Real Estate Board v. Department of Public Utilities, 334 Mass. 447 (1956).

³⁶ The Department notes that, as a major component of a least-cost resource plan, the implementation of DSM programs should result in lower costs to ratepayers over time.

programs would be appropriate when the level of demand or energy sales reduction is significant in comparison with a company's total load and sales volume. D.P.U. 86-36-F at 35. The record indicates that MWH savings in 1995 due to DSM implementation by WMECo from 1991 through 1995 are less than four percent of the Company's projected 1995 sales (Exh. WM-1, W.P. F-1; Exh. DPU-7-8).

However, the record in this case shows that strict application of the Rolling Period Method would result in a proportionately greater revenue reduction for WMECo than for other electric companies. Application of the Rolling Period Method to other electric companies has resulted in recovery periods ranging from three years to 4.5 years. See D.P.U. 95-5-CC, D.P.U. 95-2/3-CC, D.P.U. 95-1-CC, and D.P.U. 94-4-CC. Under a strict application of the Rolling Period Method, the Company would be allowed to recover revenues lost as a result of DSM implementation for a period of only one year. Not only would such a recovery period unfairly affect WMECo, but it would be counter to the policy objectives outlined in D.P.U. 86-36-F and D.P.U. 89-260, as discussed in Section III.C.1.a, above. A one-year recovery period also would not reflect a time period sufficient to allow the Company to realize the cost savings determined by the Department to be achievable through the implementation of DSM programs over time. Therefore, the Department finds that it would be inappropriate to apply strictly the Rolling Period Method in the calculation of the LBR to be recovered by WMECo.

Similarly, the Attorney General's calculation, which excludes five WMECo rate cases in which the Company was allowed to phase in the costs associated with the Millstone 3 nuclear unit, resulting in an LBR recovery period of 2.25 years, also would be inappropriate because it

would not allow the Company sufficient time to reduce its costs based on savings from DSM implementation, and therefore would be contrary to the policy objectives outlined in D.P.U. 86-36-F and D.P.U. 89-260, as enumerated above. Therefore, the Department finds that it would be inappropriate to apply the Rolling Period Method as proposed by the Attorney General in this case.

Previously, the Department stated that the Rolling Period Method is (1) best suited to meeting the policy objective of providing sufficient incentive to a company's management to reduce costs and manage a company's resources as efficiently as possible, and (2) consistent with Department precedent, potentially applicable to all electric companies, and relatively simple to administer.

The Department notes that the Rolling Period Method, as applied in the past to Boston Edison Company and Eastern Edison Company, resulted in LBR recovery periods of three years for each company. When applied to Cambridge Electric Light Company and Commonwealth Electric Company, the Rolling Period Method resulted in LBR recovery periods of four years in each case. In the case of Fitchburg Gas and Electric Light Company, which is not comparable to WMECo in size or level of DSM investment, the application of the Rolling Period Method resulted in an LBR recovery period of 4.5 years. In order to (1) afford WMECo treatment with respect to recovery of LBR that is similar to that afforded Boston Edison Company and Eastern Edison Company, which have generally comparable DSM programs, and (2) balance the policy objectives set forth in previous Orders relative to recovery of LBR, the Department finds that WMECo may recover LBR associated with each DSM implementation year for a period of three

years. The Department believes that this level of LBR recovery fairly compensates WMECo for the net revenue actually lost due to the implementation of DSM programs, and therefore satisfies DOE's regulation implementing the Clean Air Act Amendments of 1990, requiring that a utility company have the opportunity to maintain net income neutrality.

2. Implementation

The Company, CLF, and MEEC argued that the Company's DSM budgets and cost recovery for calendar year 1995 were established under terms of the settlement agreements approved by the Department in D.P.U. 92-88-A and D.P.U. 92-13, and that the Company's currently approved LBR recovery mechanism should remain in place through 1995. The Attorney General argued that the terms of these settlement agreements do not preclude the Department from applying an alternative method to calculate the recovery of LBR by WMECo in 1995 and that, therefore, the Department should apply such a method to the calculation of the 1995 CCs.

The Settlement in D.P.U. 92-88 specifies that "the conservation and load management budget amount ... and other elements of this Settlement, shall remain in effect for the years 1994 and 1995 and shall not be subject to change other than as set forth herein." Id. at 2. In addition, page 7 of the Settlement in D.P.U. 92-88 states: "the methodology for calculating costs, the recovery of the CC, ... and the elements of the CC shall be as ordered by the Department in D.P.U. 92-13 " Further, the Department notes that the terms of the settlement agreement in D.P.U. 92-13 provide that the calculation of WMECo's LBR be reconciled based on measured savings for a period of at least two years, with the possibility of extension for up to two more years. D.P.U. 92-13, at 6-7. This provision clearly anticipates recovery of LBR associated with

each year of DSM implementation over a period of at least a few years. To construe the settlements otherwise would be inconsistent with D.P.U. 89-260 where the Department allowed the recovery of LBR based on measured savings for each year of DSM implementation until the Company filed its next base rate case.

Furthermore, adherence to the spirit of the settlement agreements that were signed by a diversity of parties, including the Attorney General, and ultimately approved by the Department, requires that the Company's current LBR recovery mechanism should remain in place through 1995. The Department notes that settlement agreements, when consistent with the public interest, can serve to mitigate the need for potentially complex and lengthy litigation. Therefore, to encourage parties to negotiate settlement agreements in the public interest, the Department supports adherence to both the letter and spirit of such agreements. Accordingly, consistent with the letter and spirit of the settlement agreements in D.P.U. 92-88 and D.P.U. 92-13, the Department finds that the Company's current LBR recovery mechanism shall remain in place through calendar year 1995, and that the rolling three-year-period method shall take effect January 1, 1996.

The Company argued that the Department's Order in Phase I of this proceeding fixes the Company's LBR recovery method beyond calendar year 1995, through March 1, 1996, and that no change in the LBR recovery mechanism may be adopted prior to that date. The Department notes that its Order in Phase I of this proceeding states that the "LBR aspects of this investigation will be addressed in a Phase II Order." D.P.U. 95-8-CC (Phase I) at 2. Further, nowhere in the Department's Order in Phase I of this proceeding does the Department expressly preclude an

adjustment to the manner in which WMECo's LBR recovery is to be calculated during calendar year 1996. Thus, the Department rejects the Company's argument that the Department's Order in Phase I of this proceeding provides that no change in the LBR recovery mechanism may be adopted prior to March 1, 1996. Therefore, to avoid over-collection of LBR for January and February 1996, the Company is directed to recalculate the CCs effective September 1, 1995, to reflect any change in LBR beginning January 1, 1996 based on the three-year recovery period as described above. The Company should calculate LBR for 1996 based on its savings estimates associated with DSM implementation years 1994, 1995, and 1996, and submit the reconciliation with supporting documentation to the Department in a compliance filing no later than seven days after issuance of this Order.

IV. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the savings estimates from 1992 and 1993 DSM installations for which Western Massachusetts Electric Company has requested approval are approved in part and denied in part, as set forth above; and it is

FURTHER ORDERED: That the Company shall file a compliance filing in accordance with the directives set forth in this Order. The compliance filing shall contain recalculations of the Company's 1992 and 1993 incentive amounts and lost base revenues where the Department has directed recalculation as well as recalculations of the CC rates resulting from these changes, and shall be filed within seven days after the date of this Order. The Company shall include in its compliance filing tables similar in format to Tables 1 and 2 in this Order, based on its recalculations; and it is

FURTHER ORDERED: That the Company shall follow any and all other directives contained herein.

By Order of the Department,

Mary Clark Webster, Commissioner

Janet Gail Besser, Commissioner

TABLE 1. SUMMARY OF 1992 PROGRAM SAVINGS ESTIMATES

	Annualized Energy Savings, in MWH	Annualized Demand		Approved by DPU? (1)
		Summer	Winter	
Energy Action Program (F)	11,913	2,488	1,953	No
Customer Initiated Program (F)	1,707	495	205	Yes
Energy Conscious Construction (P)	3,032	636	506	Yes
Energy Saver Lighting Rebate (P)	2,312	461	407	Yes
Expanded Energy Check (F)	3,992	869	771	No
Medium Energy Check (P)	715	139	138	Yes
Farm Share (F)	345	56	49	Yes
C/I Total	24,016	5,144	4,029	
Residential Electric Heat (P)	1,474	63	635	Yes
Multifamily (P)	2,776	231	1,181	Yes
Public Housing (P)	1,804	149	775	Yes
Domestic Hot Water (F)	2,661	270	741	Yes
Neighborhood (F)	1,767	165	665	Yes
Lighting Catalog (F)	883	74	384	Yes
Appliance Pickup (F)	1,582	237	174	Yes
Light Fantastic (F)	30	2	13	Yes
Mass Save (F)	580	0	307	No
Energy Value Water Heating (F)	0	46	90	Yes
Energy Crafted Home (F)	3	0	2	Yes
Residential Total	13,560	1,227	4,967	
Streetlighting	139	0	35	Yes
TOTAL	37,715	6,381	9,031	

Notes: (1) (F) indicates that the Company has requested final approval for that program's 1992 savings estimates.

(P) indicates that the Company has requested preliminary approval for that program's 1992 savings estimates.

Source: (Exhs. WM-7, at 3; DPU-1-2-b, d; DPU-3-17)

TABLE 2. SUMMARY OF 1993 PROGRAM SAVINGS ESTIMATES

	Annualized Energy Savings, in MWH	Annualized Demand Savings, in KW		Approved by DPU? (1)
		Summer	Winter	
Energy Action Program	13,054	2,642	2,124	Yes
Customer Initiated Program	1,405	239	317	Yes
Energy Conscious Construction	6,817	1,446	1,081	Yes
Energy Saver Lighting Rebate	1,816	365	321	Yes
Expanded Energy Check	1,445	304	238	No
Medium Energy Check	3,752	828	580	Yes
Motor Rebate	35	7	5	Yes
Farm Share	379	62	49	Yes
C/I Total	28,703	5,893	4,715	
Residential Electric Heat	2,993	149	1,213	Yes
Multifamily	2,733	250	1,188	Yes
Public Housing	1,494	121	640	Yes
Domestic Hot Water	2,294	257	654	Yes
Neighborhood	2,627	267	917	Yes
Lighting Catalog	1,021	87	445	Yes
Appliance Pickup	1,439	214	153	Yes
Light Fantastic	237	20	103	Yes
Mass Save	519	0	290	Yes
Energy Value Water Heating	0	19	47	Yes
Energy Crafted Home	137	8	10	Yes
Residential Total	15,494	1,392	5,660	
Streetlighting	246	0	62	Yes
TOTAL	44,443	7,285	10,437	

Notes: (1) The Company has requested preliminary approval for all 1993 program savings estimates.

Source: (Exhs. WM-7, at 3; DPU-1-2-b, d)

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).